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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

ANDREW MARSHALL and all other  
similarly situated,

Plaintiff,

v.

BONDED ADJUSTMENT  
COMPANY, a Washington  
Corporation, and SPOKANE  
EMERGENCY PHYSICIANS, P.S., a  
Washington Corporation,

Defendants.

Case No.: CV-11-022-RMP

PLAINTIFF'S MEMORANDUM IN  
SUPPORT OF PLAINTIFF AND  
DEFENDANT SPOKANE  
EMERGENCY PHYSICIANS' JOINT  
MOTION TO CONTINUE THE MAY  
7, 2012 TRIAL DATE, SET A  
SCHEDULING CONFERENCE  
HEARING AND ENTER A NEW  
SCHEDULING ORDER

On April 14, 2011, a scheduling conference hearing was held. Attorney for  
Defendant Bonded Adjustment Company Jeffrey Hasson failed to appear.

However, Mr. Hasson had agreed to the Joint Certificate filed with the Court. (ECF

1 No. 15). No party had requested bifurcation of the Discovery. Plaintiff  
2 immediately sent discovery after the FRCP 26(f) conference as allowed by the  
3 rules. Fed. Rule Civil Procedure, Rule 26(f). Defendant has refused to answer the  
4 discovery.  
5

6 First Bonded obtained a Protective Order on expedited review, allowing  
7 Bonded more time to answer (based on a claim that a vacation interfered with  
8 counsel's inability to comply with the time limits in the Federal Rules of  
9 Procedure). Then instead of answering, Bonded filed another Motion for Protective  
10 Order to avoid answering (set for July 1 without oral argument). ECF No. 41.  
11

12  
13 *Wal-Mart Stores, Inc. v. Dukes*, --- S.Ct. ----, 2011 WL 2437013 U.S., 2011  
14 makes clear the need for discovery since some factual basis for class certification  
15 must now be shown. This newly announced standard ends any claims for  
16 bifurcation of discovery in a class case. Mr. Hasson refused to consider  
17 participating in preparing a new Joint Certificate regarding scheduling and will not  
18 agree to a continuance of any deadline of more than ninety (90) days. Bonded still  
19 has not answered the discovery and still does not seek bifurcation. The refusal to  
20 respond to discovery is a tactic to make the class certification deadline (July 31,  
21 2011, ECF No. 26, p. 3) impossible to meet and otherwise frustrate Plaintiff's  
22 orderly prosecution of their case.  
23  
24  
25

1           Spokane Emergency Physicians is diligently working through (running  
2 searches) (approximately 12,000 electronic pages related to 290,000 patients) the  
3 records to identify persons who may meet the putative class definition in response  
4 to Plaintiff's Requests for Production. Plaintiff agreed that since Defendant is  
5 communicating and diligently attempting to properly respond more time to respond  
6 is appropriate.  
7

8  
9           Under the current trial schedule, the Plaintiff must file for class certification  
10 no later than July 31, 2011. That deadline is no longer possible<sup>1</sup> and will need to be  
11 extended. An extension of the class certification deadline impacts other deadlines  
12

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13 <sup>1</sup>Without the class discovery, it is not practicable to move for class certification.

14 *Wal-Mart Stores, Inc. v. Dukes*. On April 1, 2011, the Plaintiff served Defendant  
15 BAC with written discovery related to the class elements numerosity, typicality  
16 and commonality. Fed. R. Civ. P. 23. On April 26, 2011 BAC made an expedited  
17 motion for an extension of time to answer the discovery. ECF No. 27. On May 4,  
18 2011, the Court granted BAC extension of time to answer and ordered BAC to  
19 answer by May 31, 2011. ECF No. 36. On May 31, 2011, BAC did not answer the  
20 class discovery, but instead moved for a Protective Order. The Court is set to hear  
21 that motion on July 1, 2011.  
22  
23  
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25

1 requiring additional extensions. Rather than deal with each extension in a  
 2 piecemeal fashion, judicial economy, and fairness requires resetting the trial date  
 3 and entering a new scheduling order.  
 4

5 Plaintiff and Defendant Spokane Emergency Physicians filed an Amended  
 6 Joint Certification requesting a trial date in the last two weeks of October 2012,  
 7 with a new class certification deadline of December 31, 2011. The parties agree  
 8 that the Court's usual trial schedule is otherwise appropriate based on a trial date of  
 9 later in October 2012. Plaintiff and Defendant Spokane Emergency Physicians  
 10 request a second scheduling conference.  
 11

12 Dated this the 29<sup>th</sup> day of June, 2011.  
 13

14 *Michael D. Kinkley, P.S.*

*Michael D. Kinkley, P.S.*

15  
 16 s/Michael D. Kinkley  
 Michael D. Kinkley  
 WSBA # 11624  
 Attorney for Plaintiffs  
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 18

s/Scott M. Kinkley  
 Scott M. Kinkley  
 WSBA # 42434  
 Attorney for Plaintiffs  
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20 *Kirk D. Miller, P.S.*

21 s/Kirk D. Miller  
 Kirk D. Miller  
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 Attorney for Plaintiffs  
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 23  
 24  
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CM/ECF CERIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of June, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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